THE LOS ANGELES LANDLORD-TENANT COURT

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The Problems

By the mid-1970's litigation between landlords and tenants had become, by far, the most prevalent and fastest growing form of civil litigation in the Los Angeles Municipal Court. And no end was in sight. In calendar 1976, these cases accounted for a full one-third of the court's entire civil caseload, excepting only small claims litigation. Other courts of similar jurisdiction in urban areas reported similar increases.

The territorial jurisdictional area of the Los Angeles Municipal Court consists of the cities of Los Angeles and San Fernando. With sixty-four judges and eighteen commissioners, it is many times larger than any other municipal court in California. It is one of twenty-four municipal courts in Los Angeles County. Reportedly, it is the largest court of its kind in the nation.

Its civil jurisdiction extends to suits where the amount in controversy does not exceed $15,000.[1] In the principal kind of landlord-tenant dispute, unlawful and forcible detainer, there is a further limitation: the fair rental value of the property in controversy must not exceed $600 per month.

*Judge of the Municipal Court, Los Angeles Judicial District. Judge Epstein's views and analysis, expressed in this Article, are his, and do not necessarily represent those of the Los Angeles Municipal Court. Judge Epstein presided in the Landlord-Tenant Court from its inception in 1977 through the end of June 1978.

1. CAL. CIV. PROC. CODE § 86(a)(4) (Deering 1979). The jurisdictional limit had been $5,000 from 1961 through June 30, 1979. It was increased to $15,000 effective July 1, 1979.

As might be expected, a number of sources account for the increase in landlord-tenant litigation. The so-called *Green* defense,[2] which recognizes the tenant's right to withhold rent if the premises are uninhabitable, and the rise of common law[3] and statutory[4] retaliatory eviction defenses are often cited as reasons. Undoubtedly they play a role, but, the principal source of the litigation is the nature of the housing market in Los Angeles County.

By July 1, 1976 there were 1,382,796 rental housing units in Los Angeles County; thirty-seven percent of all available units were multiple dwellings.[5] The county-wide vacancy rate was then 4.68 percent and in some areas as low as 1.64 percent.[6]

In 1976, 66,190 civil actions[7] were filed in the Los Angeles Municipal Court. Of these, 22,039, or about one-third, were unlawful detainer actions brought by landlords to regain property rented to tenants.

The pressure on these dispossessed tenants to find affordable housing has increased. In the City of Los Angeles, virtually nothing is being built at a rental level of $400 a month or less. Each month the city's housing stock diminishes as the bottom end becomes so uninhabitable as to be unrentable. Another development is occurring at the other end of the housing spectrum, which also diminishes the amount of rental housing: each month a number of luxury-type apartments are converted to condominiums. Tenants must be given a first right to purchase,[8] but the prices are often far beyond their reach.

The Legal Background

The bulk of landlord-tenant litigation consists of suits by landlords to evict tenants. However, there are some other cases as well. Tenants sue landlords or former landlords for return of security deposits,[9] for recovery of rental payments considered excessive because of then-existing

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2. Green v. Superior Ct., 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974).

3. *See, e.g.*, Schweiger v. Superior Ct., 3 Cal. 3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970).

4. CAL. CIV. CODE § 1942.5 (Deering 1979).

5. Los Angeles County Department of Regional Planning, Q. Bull No. 133 (1976) at p.1.

6. Records of Los Angeles County Department of Regional Planning, Population Services Division (1977).

7. This and all subsequent numerical references to the number of cases filed excludes small claims actions.

8. CAL. GOV'T. CODE § 66427.1 (b) (Deering 1979).

9. *See Id.* § 1950.5.

habitability problems,[10] other breaches by the landlord, or, more recently, violation of a rent control ordinance. Landlords sue tenants and former tenants for unpaid rent and physical damage to the property and tort suits are brought by both sides against the other.

All of these cases together do not amount to more than a small fraction of the aggregate landlord-tenant litigation. The rest is landlords' suits to evict tenants, after termination of a term or periodic tenancy, or a tenant's breach. These actions are collectively termed "unlawful detainers" in California, and that term will be used in the discussion which follows.

Like other states, California has enacted a comprehensive series of laws governing unlawful detainer. These statutes reflect an ancient[11] civil compromise. The landlord is forbidden any form of self-help to evict a tenant, but is assured the swiftest judicial remedy possible.

Unlawful detainer litigation has an absolute preference on the civil calendar; no other kind of civil case outranks it in priority.[12] When suit is filed, a five-day summons is issued,[13] rather than the usual thirty-day summons.[14] That is, a defendant has only five days to answer or otherwise plead, instead of the thirty days permitted in other civil litigation.

Practically the only triable issue in an unlawful detainer suit is the right to possession of the property. Only damages incidental to possession are permitted.[15] The landlord cannot raise other issues, such as a claim for damages due to destruction of the property. If the landlord brings such a claim, the tenant can insist that the case be stripped of its unlawful detainer characteristics.[16] That leaves the landlord with the common law remedy of ejectment, a legal disaster from any practical point of view.

By the same token, the tenant cannot cross-complain for damages or raise issues unrelated to possession. With minor exceptions, the tenant cannot contest the title of the landlord.[17]

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10. Quevado v. Braga, 72 Cal. App. 3d Supp. 1, 140 Cal. Rptr. 143 (App. Dept. Super. Ct. 1977).

11. It reportedly traces back to Henry II.

12. CAL. CIV. PROC. CODE § 1179(a) (Deering 1979).

13. *Id.* § 1167.

14. *Id.* § 412.20(a)(3).

15. Harris v. Bissell, 54 Cal. App. 307, 313, 202 P. 453, 456 (Dist. Ct. App. 1921).

16. Green v. Municipal Ct., 51 Cal. App. 3d 446, 451-452, 124 Cal. Rptr. 139, 142 (Ct. App. 1975).

17. *See* Vella v. Hudgins, 20 Cal. 3d 251, 258, 572 P.2d 28, 32, 142 Cal. Rptr. 414, 418 (1977).

For all these reasons, unlawful detainer is frequently described as a "summary" remedy. But that is a misnomer. Jury trial is available to try factual issues;[18] full discovery rights are available;[19] and, in general, the civil practice rules applicable in other civil cases apply as well except where the statute expressly provides otherwise.[20]

The law exacts conditions for asserting the privileges afforded by the unlawful detainer remedy: the statute must be strictly followed. Although the law in this area is not particularly difficult, it is intricate and technical errors often defeat an entire action.[21]

The most frequent type of unlawful detainer suit is based on breach of the rental agreement by nonpayment of rent. Other than technical defenses and the claim that the rent was paid, the most frequent tenant response is that rent was withheld because the residence was uninhabitable. The California Supreme Court has recognized that habitability is the essense of a rental bargain; the tenant's obligation to pay rent is a covenant dependent on receiving habitable housing. The court determines whether the premises are uninhabitable, and if so, to what degree. Based on an apportionment, the court then orders the tenant to pay what is due on pain of issuing a writ of possession to the landlord if the amount determined to be due is not paid.[22]

The second most frequent suit is based on termination of a periodic tenancy, usually month to month. Tenants often present the affirmative defense that the eviction was taken in retaliation to the tenant's complaints about uninhabitability or to the tenant's exercise of other legally protected rights.[23]

These are the bases of suit, and the defenses most frequently asserted in litigated cases.

Founding of the Court

The idea of establishing a special court in Los Angeles to handle these

18. CAL. CIV. PROC. CODE § 1171 (Deering 1979).

19. *Id.* § 1177.

20. *Id.*

21. Common examples are demanding more rent than is due, and filing the suit before the notice period has expired.

22. *See* Green v. Superior Court, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974).

23. *See, e.g.,* Schweiger v. Superior Ct., 3 Cal. 3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970).

housing cases originated with Judge Irwin J. Nebron.[24] Upon first hearing the idea, I was frankly skeptical. Special courts must overcome a heavy burden of persuasion to justify their creation. If specialized courts were set up for every discrete area, we would so Balkanize the court system depriving it of the flexibility needed to accommodate changing patterns of cases and constantly arising emergencies.

Yet, sometimes the burden of persuasion is overcome. Law and motion courts are examples. So are family law, probate and juvenile courts. Eventually, I was persuaded that good reason existed for creating a landlord-tenant court: a very large volume of cases in a specialized area demanded priority, and many of the applicable rules were *sui generis.* Most of all, there was an opportunity to attempt some innovative solutions to a number of very old problems and, through that effort, to improve our level of public service.

Judge Nebron put together a group from the county bar, county government, trade unions, consumer groups, apartment owners, and both print and electronic media. All were enthusiastic about the court. With their support, the landlord-tenant court began in June 1977,[25] and I was asked to be founding judge.

Operation of the Court

The present operation of the landlord-tenant court is the result of nearly two years' experience and the refinement of workable programs. Some have existed since the court's inception, and others developed at various points along the way. A few things simply did not work out, and had to be changed. The more important of these are next discussed.

Formerly, all civil cases, excepting small claims, filed in the central district of the court[26] were set in Division 1, our Civil Master Calendar. Cases were then assigned to courts on an as-available basis.

With the opening of the landlord-tenant court, landlord-tenant cases were set in a separate division. Each judge on the civil panel agreed,

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24. Judge Nebron was Assistant Presiding Judge of the Los Angeles Municipal Court when he first broached the idea in 1976.

25. The origin and first several months of the landlord-tenant court's operation are described in Nebron and Ides, *Landlord-Tenant Court in Los Angeles: Restructuring the Justice System,* 11 LOY. L. A. L. REV. 537 (1977-78).

26. The Los Angeles Municipal Court consists of a central district and several branch courts. Civil actions are tried in the San Fernando, Van Nuys and San Pedro branches, as well as in the central district. Civil actions filed in the West Los Angeles branch are transferred to the central district.

whenever possible, to arrange his or her schedule in order to hear one or two unlawful detainer cases in the morning, beginning at 9:00 A.M. Most such cases are short causes, taking fifteen to forty-five minutes. The landlord-tenant court acts as a "mini-master calendar" court in assigning a limited number of cases each morning to judges on the civil panel. Longer cases are assigned in coordination with the general master calendar court.

Cases are noticed into the landlord-tenant court at 8:30. The checking in process takes about fifteen minutes, and the judge takes the bench at 8:45. The opening statement and calendar call occupy the next fifteen minutes. Beginning at 9:00, cases are assigned to other courts and to settlement officers; then motions and "prove-ups," cases where the defendant, having answered, fails to appear, are heard. Contested cases are generally heard in the order they appear on the calendar. Settlements requiring court approval are presented as ready, usually in between prove-ups and contested trials.

Most matters are disposed of by about 10:30. Other contested cases, including longer matters, are heard during the rest of the day.

Opening Statement

At present, thirty-five new cases are set in the landlord-tenant court each day. Between litigants, attorneys, witnesses, court attaches and others, some 150 persons attend the beginning of each session. About one-third of the plaintiffs and over two-thirds of the defendants appear in *propria persona,* "pro per." To them the courtroom can be a terrifying, often intimidating place. And the stakes are very high. For the landlord, a severe cost in lost rent, lost time, and general anxiety is involved. Taxes, mortgage, insurance and upkeep payments must be made whether or not rent is paid. For the tenant, having a place to live is often the basic issue; although there are necessities of life more important than shelter, the list is short.

The court's opening statement is mainly directed at the pro per. To a lesser degree, it is aimed at represented parties and attorneys unfamiliar with the court or this area of law. It consists of three parts. The objective of the first is simply to try to make the proceedings less threatening and more understandable. The second briefly describes the issues involved and the procedures used in trials. The third discusses the possibility of a settlement and explains the settlement officer program.

So far as I am aware, this is the only opening statement regularly given in local civil courts, other than small claims courts where recorded statements are often used. The landlord-tenant court statement cannot be re-

corded, or pefunctorily read by a court attache. To be effective, it must be given with meaning and emphasis by the judge. Probably as many favorable comments have been directed at this feature of the court as any other.

Settlement Officer Program

Most unlawful detainer cases ought to be settled. Usually, it is a matter of finding a just result, and recognizing that in any settlement no one wins or loses all. Probably the same can be said of most civil litigation.

As every civil litigator knows, this truism is more easily stated than achieved. If settlements are difficult to arrange when experienced lawyers are involved, they are much harder to come by when the parties are unrepresented. And when, as typical, the parties perceive that the issues are vital, it is most difficult of all.

Yet, a reasonable basis for settlement usually exists; a catalyst is needed to help the parties find it. The Los Angeles County Bar Association, Conference of Barristers, supplied such a catalyst. The Barristers is an organization of lawyers admitted to the bar within the last five years. There are over 6,600 members of the Barristers in Los Angeles County.

Through a joint court-Barristers program, well over three hundred Barristers have been trained to serve as settlement officers, and have served in that capacity. In April 1979 orientation began for a new group of 165 additional attorneys. This service is completely *pro bono.*

Attorneys interested in serving in the program appear at a periodic Saturday morning session where a three-hour program on substantive law and settlement procedures is presented. After the program the attorneys are asked to sign up for one or more court sessions at which they will serve as settlement officers. Before they may serve, however, the attorneys must devote another morning observing the landlord-tenant court and settlement conferences.

Having contributed a day of time gratis, the attorneys are now qualified to act as settlement officers. They meet with both sides in a conference room adjacent to the courtroom. The settlement officers are not permitted to give legal advice or use any "muscle" in encouraging a settlement. Rather, they listen to each side and try to find a common ground of agreement, fair to both sides.

Neither side is obligated to accept a settlement. If a case is not settled, the court learns no more than that. No report is made of the discussion, indeed, such evidence is inadmissible.

The success rate of this program has been phenomenal. Since its inception in November, 1977, over five hundred cases have been settled. Of all

cases submitted to settlement officers, over 74 per cent have been settled. This has saved the court at least four months of trial time, and has often better served the litigants than a win-or-lose trial.

A common settlement arrangement permits the tenant to stay in possession provided that stated payments are made. If they are not paid when due, the landlord is to have an *ex parte* writ of possession on verified application, and if they are paid after a reasonable time, usually from two to three months, the landlord files a full satisfaction of judgment or dismissal, leaving the tenant in rehabilitated premises.

It bears repeating that no one is under any court or settlement officer imposed pressure to accept a settlement. If the tenant was in default of rent and the landlord followed the statutory requisites, the landlord is entitled to regain possession, even though the tenant may then be willing to pay what he owes. Few settled cases come back because a party failed to live up to the agreed-upon terms.

Among the beneficiaries of the program are the settlement officers, many of whom have served on several occasions. They not only gain satisfaction from performing a significant public service, but also receive training and insight in this bread-and-butter aspect of civil practice.

Model Complaint

Shortly after the landlord-tenant court began, we developed a model summons and complaint which covers over ninety-eight percent of unlawful detainer cases filed, and takes up only two pages, including mandatory blank space, and a verification.[27] It took a committee of lawyers and judges the better part of a year to develop the form, refine it, and steer it through to approval by the many bodies whose agreement was legally or practically necessary. The form, for sale by the clerk of court, is not a mandatory form, but is now in wide use by attorneys and pro per. It is currently being reviewed for possible statewide adoption by the State Judicial Council.

Clinical Program

Several months after the landlord-tenant court began, professors at the UCLA School of Law presented a proposal whereby students would work in the court through the school's clinical program. The details were satisfactorily worked out, and clinical programs were established by UCLA and by the Southwestern University School of Law. Certified law

27. *See* Appendix.

students from both schools represent indigents who are opposed by council. Each attorney instructor supervises one student. The program appears to be working well. It has not resulted, as some feared, in protracted or "federalized" litigation. In fact, the percentage of settlements in clinical program cases has exceeded the general average for landlord-tenant cases.

Night Court

One of the major innovations established by Judge Nebron was a Night Justice Center. The court had long had a limited evening traffic court program. Judge Nebron proposed expanding this to include small claims and landlord-tenant cases.

The small claims aspect was quite successful. But the landlord-tenant feature did not work at all for several reasons. As a ground rule, no landlord-tenant case was set at night unless *both* sides so desired. In fact, the law gives non-small claims litigants the right to have their cases heard during normal sessions of court.[28]

The landlord, as plaintiff, would make the first choice. If the landlord wanted an evening session, he or she would so state at the time of filing. The court attached a short form to the defendant's copy of the summons, on which the defendant was to designate whether he or she wanted a day or evening session, or had no preference. The defendant's designation was to be filed with the answer.

This procedure was problematic for in the great majority of unlawful detainer cases, there is no answer; the plaintiff wins by a default. Filing an answer means the case will be litigated, entailing costs, delay, and, of course, the chance that the defendant will win. Landlords are not anxious to remind tenants of their rights to answer. The court's time preference designation for defendants did just that by drawing attention to the answer procedure. As a result, few unlawful detainers were ever set at night.[29]

Consistency and Development of Court Materials

Trial lawyers abhor not being able to advise a client of the probable court ruling on commonplace legal issues. Clients, not without reason, are troubled by differing court interpretations on such issues.

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28. *See* CAL. GOV'T CODE § 72306 (Deering 1979).

29. Subsequently, budgetary problems required the termination of the small claims and landlord-tenant aspects of the Night Justice Center.

Concentrating landlord-tenant disputes into a specialized court facilitated greater sharing and discussion of legal issues between the judges of the civil panel. In the end, a general consistency developed in their approach to most legal issues.

While a plethora of legal materials for judges had been developed by the California Judges Association and the California Center for Judicial Education and Research, almost no material existed on landlord-tenant litigation. That has been changed. A fifty-four page chapter on the subject has been added to the permanent materials published for California judges; a landlord-tenant course has been added to the California Judges College curriculum, and a series of lectures has been presented at statewide meetings of judges. All of this came about as a direct result of the landlord-tenant court.

Trouble Shooting

The specialization brought about by the court has focused judicial attention on various administrative problems which occasionally occur in processing unlawful detainer litigation. So far it has been possible to quickly solve these problems as they occurred, and before widespread difficulties arose.

Identification of Areas for Legislative Change

The concentration of cases and attention has also put a number of statutory problems in sharp relief. While not involving itself in political issues, such as rent control, the court has been able to catalogue a number of areas where the administration of justice demands changes for both landlords and tenants. A bill to remedy these problems is now before the California legislature.

Bar Advisory Committee

Shortly after creation of the landlord-tenant court, the county bar established an advisory committee on landlord-tenant litigation. This committee, established at this court's suggestion, is made up of landlords' and tenants' attorneys and a law professor. It has advised the court in favor of the settlement officer and clinical programs, suggested the earlier starting times for court sessions, and was chiefly responsible for developing the form for unlawful detainer complaints. Most recently, the committee has been developing a benchbook for the court for use by both judges and practitioners.

Volume of Cases

The following table compares the number of civil cases filed in the Los Angeles Municipal Court during the past several years:[30]

	1976	1977	1978	1979*
General Civil (Excluding UD)	44,152	41,418	42,720	45,300
Unlawful Detainer	22,039	26,530	33,355	33,696
Total	66,190	68,248	76,075	78,996

*Projected, based on first quarter

These figures reflect filings in the branch courts as well as the central district. The number filed in the branch courts is relatively insignificant, however, varying from 1¾ percent to 1¼ percent over the four-year period.

When the landlord-tenant court was established, the number of contested cases set each day had reached twenty, from about twelve to sixteen the year before. In order to keep pace with the growing caseload, that figure was increased to twenty-five, thirty and, finally thirty-five. Thirty-five cases per day works out to about 8,800 cases per year, all but a few hundred of which are determined in the landlord-tenant court or a trial division by assignment from that court.

Prospects and Problems

The landlord-tenant court has enabled the Los Angeles Municipal Court to handle an overall caseload increase of about twenty per cent with no increase in the number of bench officers or budget.

An overall assessment of the value and effectiveness of the court during its first two years of operation is for others to make who are less close to the court than I have been. Certainly the court is not without potential problems. The judicial assignment is seen as arduous. There is always the danger of problems if one side perceives the court to be less than fair to both sides. There are also limits on what can be achieved from reallocation of static or contracting resources. Clearly such a court can only suc-

30. The number of non-unlawful detainer civil cases increased only 2⅔% during the four-year period, and almost all of that increase is in the current year. The number of these cases actually diminished for two years over the 1976 base.

At the same time, unlawful detainers increased nearly 53%, mainly in 1977 and 1978, leveling off in 1979. The overall increase for the period is just under 20%, nearly all of which is accounted for by unlawful detainers.

ceed in a large urban area with a large volume of rental housing.

But if there are problems, as is inevitable, there are challenges as well. What is paramount is that we not be afraid to try to do better.

APPENDIX

THE COMPLAINT

(Name, address and telephone number, if any, of attorney or plaintiff without attorney)

FOR USE IN LOS ANGELES JUDICIAL DISTRICT ONLY

IN THE MUNICIPAL COURT OF LOS ANGELES
JUDICIAL DISTRICT COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA

_____ CASE NO. _____

Plaintiff,

COMPLAINT
UNLAWFUL DETAINER

DOES 1 and 2 Defendant,

PLAINTIFF declares: (Check and fill in blanks as appropriate.)

☐ 1. Plaintiff does not know the true names or capacities of the defendants sued as Does 1 and 2.

☐ 2. At all times mentioned in this Complaint, plaintiff was and is a[n] ☐ individual; ☐ corporation; ☐ partnership duly organized and existing under the laws of the State of California.

☐ 3. Plaintiff has filed and published the fictitious business name statement required by Business and Professions Code sections 17910 and 17917.

☐ 4. On or about (Date): _____, defendant rented:

_____,

(Address, including street, city [if any] and zip code)
pursuant to a ☐ written; ☐ oral agreement. Defendant thereafter took possession and remains in possession of the premises.

☐ 5. A copy of the written agreement is attached as Exhibit and as a part of this Complaint.

☐ 6. Plaintiff has maintained the premises in a habitable condition.

☐ 7. Possession of the premises is demanded because of ☐ nonpayment of rent; ☐ termination of the rental term; ☐ other (Specify):

☐ 8. Defendant's tenancy was terminated pursuant to a written notice to defendant[s] which was properly served on (Date): _____. A copy of this notice is attached as an Exhibit and a part of this Complaint.

☐ 9. This action is based on failure to pay rent. Pursuant to the rental agreement, $_____ became due and payable on (Date): _____ for the period beginning on (Date): _____ and ending on (Date): _____, no part of which has been paid except for: _____. (State amount if any; if none, state none).

☐ 10. The fair rental value of the premises is: $_____ per day. This amount is due as damages for each day defendants have remained in possession of the premises after termination of the tenancy.

☐ 11. Plaintiff is now entitled to possession of the premises.

☐ 12. Attorney fees are requested pursuant to paragraph (Number): _____ of the written rental agreement.

☐ 13. Other (Specify):
☐ Additional page is attached as a part of this complaint.

Plaintiff waives all recovery in excess of the jurisdiction of the Municipal Court. Plaintiff prays for judgment as follows: 1. For restitution and possession of the premises; 2. For unpaid rent to which plaintiff is entitled, if any, and for damages at the rate of $_____ per day from the expiration date of the tenancy to date of judgment; 3. (Other, specify):

DATED: _____

_____
[Signature of Plaintiff or
Attorney for Plaintiff]

VERIFICATION

(Use another form if verification is by attorney, for a corporation or partnership or if it is executed outside California.)

I am the plaintiff in this action and have read this complaint. I declare under penalty or perjury that the foregoing is true and correct and that this declaration was executed on (Date): _____ at _____, _____, California.
(City, if any) (County)

_____
(Name)

_____
(Signature)

Note: This form has since been revised to accomodate the rent stabilization laws enacted in Los Angeles County.